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7 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Case No. 08CR0207-BEN
11 Plaintiff,)
12 v.)
13 FRANCISCO HERNANDEZ-GUTIERREZ,)
14 Defendant.)
15

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS AND ORDER
THEREON**

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Christina
18 M. McCall, Assistant United States Attorney, and defendant FRANCISCO
19 HERNANDEZ-GUTIERREZ, by and through and with the advice and consent of defense counsel,
20 Frank Murphy, Esq., that:

21 1. Defendant agrees to execute this stipulation on or before the change-of-plea hearing
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
23 intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to the single
24 count of the Indictment charging defendant with a non-mandatory minimum count of Transporting
25 Illegal Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and 18 U.S.C. § 2.

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1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
 2 provide the signed, original plea agreement to the Government prior to the disposition date set by
 3 the Court.

4 3. The material witness, Marcos Alonso-Dominguez, in this case:

5 a. Is an alien with no lawful right to enter or remain in the United States;
 6 b. Entered or attempted to enter the United States illegally on or about January
 7 8, 2008;

8 c. Was guided to the border fence by a smuggler and instructed to jump over the
 9 border fence and run to a vehicle that took him to defendant's tractor-trailer, where defendant and
 10 the material witness had a brief conversation about illegally transporting the material witness to Los
 11 Angeles;

12 d. Was paying, or having others pay on his behalf, \$2,000 to defendant or others
 13 to be brought into the United States illegally and/or transported illegally to their destination therein;

14 e. Identified defendant from a photo lineup as the driver of the vehicle
 15 transporting him illegally to Los Angeles; and,

16 f. May be released and remanded immediately to the Department of Homeland
 17 Security for return to their country of origin.

18 4. After the material witness is ordered released by the Court pursuant to this stipulation
 19 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or
 20 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
 21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22 a. The stipulated facts set forth above shall be admitted as substantive evidence;
 23 b. The United States may elicit hearsay testimony from arresting agents
 24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
 25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
 26 of (an) unavailable witness(es); and,

27 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
3 waives the right to confront and cross-examine the material witness(es) in this case.

4 5. By signing this stipulation and joint motion, defendant certifies that defendant has
5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
6 further that defendant has discussed the terms of this stipulation and joint motion with defense
7 counsel and fully understands its meaning and effect.

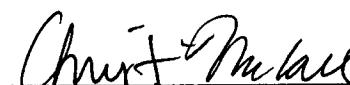
8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
9 immediate release and remand of the above-named material witness(es) to the Department of
10 Homeland Security for return to their country of origin.

11 It is STIPULATED AND AGREED this date.

12 Respectfully submitted,

13 KAREN P. HEWITT
14 United States Attorney

15 Dated: 3-12-08.


CHRISTINA M. McCALL
Assistant United States Attorney

16 Dated: 3/11/08.


FRANK MURPHY
Defense Counsel for Francisco Hernandez-Gutierrez

17 Dated: 3/11/08.


FRANCISCO HERNANDEZ-GUTIERREZ
Defendant

ORDER

2 Upon joint application and motion of the parties, and for good cause shown,

3 THE STIPULATION is admitted into evidence, and,

4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
5 forthwith to the Department of Homeland Security for return to their country of origin.

6 | SO ORDERED.

7 Dated:

~~United States Magistrate Judge~~